

STATE OF MICHIGAN
COURT OF APPEALS

DEAN BORLAND,

Plaintiff-Appellant,

v

WEST MICHIGAN LAKESHORE
ASSOCIATION OF REALTORS,

Defendant-Appellee.

UNPUBLISHED
December 11, 2007

No. 276908
Ottawa Circuit Court
LC No. 06-054627-CH

Before: Bandstra, P.J., and Meter and Beckering, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff Dean Borland, a licensed realtor and a member of defendant West Michigan Lakeshore Association of Realtors (WMLAR), appeals as of right from an order granting summary disposition to WMLAR. We affirm.

Plaintiff alleged in his February 28, 2006, complaint that, “[i]n addition to acting as a real estate agent,” plaintiff “rents houses, townhomes, and condominiums to tourists for vacation use.” In 2005, plaintiff rented a home to a family for vacation use, and the family filed a complaint with WMLAR against plaintiff. According to plaintiff, WMLAR “sent [p]laintiff a written reprimand and sanctioned him even though the rental was for transient/vacation type use.” Plaintiff requested the following declarations in his complaint:

A. The rental and management of transient vacation accommodations does [sic] not constitute a transaction in real estate.

B. The “membership agreement” between Plaintiff and [WMLAR] applies only to Plaintiff’s conduct as a realtor and a transaction in real estate.

C. [WMLAR] does not have jurisdiction or authority to discipline Plaintiff for conduct not involving a transaction in real estate.

D. [WMLAR]’s “Code of Ethics” does not apply to Plaintiff’s entire life but, rather, to his conduct as a realtor while completing a transaction in real estate.

On November 2, 2006, WMLAR moved for summary disposition under MCR 2.116(C)(7), (8), and (10). WMLAR alleged that it had the authority to discipline plaintiff

because its Code of Ethics specifically states that WMLAR has the authority to discipline members for “real estate-related activities,” and plaintiff’s activity in renting the vacation home was a real estate-related activity. WMLAR also alleged that its conduct in this case was not subject to judicial review in light of the waiver provision contained in the Code of Ethics, which states:

Every member, for and in consideration of his right to invoke arbitration proceedings and to initiate complaints under the Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®, hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request.

After hearing oral arguments, the trial court ruled that the activity plaintiff engaged in was a real estate-related activity, and it therefore granted WMLAR’s motion for summary disposition.

Plaintiff contends that the court erred in granting summary disposition to WMLAR. We review de novo a court’s decision regarding a motion for summary disposition. *Gyarmati v Bielfield*, 245 Mich App 602; 629 NW2d 93 (2001). The court did not specify on which subrule of MCR 2.116(C) it relied in making its ruling, but from context it appears that the court relied on MCR 2.116(C)(10). In evaluating a summary disposition motion brought under MCR 2.116(C)(10), a court considers the “affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties” in the light most favorable to the opposing party. *Corley v Detroit Bd of Ed*, 479 Mich 274, 278; 681 NW2d 342 (2004). “Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.” *Id.*

Although the trial court did not reach the issue, WMLAR’s issue regarding the waiver provision is governed by MCR 2.116(C)(7), which allows for summary disposition if “[t]he claim is barred because of release” “In determining whether a party is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(7), a court must accept as true a plaintiff’s well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff’s favor.” *Wood v Bediako*, 272 Mich App 558, 562; 727 NW2d 654 (2006) (internal citations and quotation marks omitted).

We conclude that the court did not err in granting summary disposition to WMLAR because the disciplinary action was not subject to judicial review. A WMLAR hearing panel held a hearing with regard to the complaint about the rental property in question. After the hearing panel found grounds to sanction plaintiff, WMLAR’s Board of Directors entertained plaintiff’s appeal and ultimately denied it. Plaintiff then attempted to circumvent WMLAR’s internal procedures by filing a complaint in the circuit court. However, by voluntarily joining WMLAR, plaintiff agreed to be bound by the Code of Ethics. The code specifically provides that a member “hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other

action taken or rendered under these procedures in the absence of willful or wanton misconduct.” “Board” is defined in the Code of Ethics as including a local association of realtors such as WMLAR.

As noted in *In re Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810, lv granted 479 Mich 853 (2007):

The proper interpretation of a contract is a question of law that this Court reviews de novo. In interpreting a contract, this Court's obligation is to determine the intent of the parties. This Court must examine the language of the contract and accord the words their ordinary and plain meanings, if such meanings are apparent. If the contractual language is unambiguous, courts must interpret and enforce the contract as written. Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law. [Internal citations and quotation marks omitted.]

The waiver provision at issue here is unambiguous and clearly reflects an intent to bar a lawsuit such as the one initiated by plaintiff. Indeed, there was no evidence of “willful or wanton misconduct” on the part of WMLAR, and plaintiff's complaint does not even allege such conduct. Under the circumstances, plaintiff simply cannot circumvent the Code of Ethics and the rulings of WMLAR by resorting to a lawsuit in the circuit court. WMLAR was entitled to summary disposition. As noted in *Howe v Detroit Free Press*, 219 Mich App 150, 158; 555 NW2d 738 (1996), aff'd 457 Mich 871 (1998), we may affirm a trial court's summary disposition decision on an alternative basis.

Affirmed.

/s/ Richard A. Bandstra

/s/ Patrick M. Meter

/s/ Jane M. Beckering